

APPENDIX

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975
No. 75-1264

INTERNATIONAL UNION OF ELECTRICAL, RADIO
AND MACHINeworkERS, AFL-CIO, LOCAL 790,

Petitioner,

v.

ROBBINS & MYERS, INC.,

Respondent.

No. 75-1276

DORTHA ALLEN GUY,

Petitioner,

v.

ROBBINS & MYERS, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI IN NO. 75-1264, FILED MARCH 5, 1976
PETITION FOR CERTIORARI IN NO. 75-1276, FILED MARCH 8, 1976
CERTIORARI GRANTED APRIL 26, 1976 IN NOS. 75-1264, 75-1276

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975
Nos. 75-1264; 75-1276

INTERNATIONAL UNION OF ELECTRICAL, RADIO
AND MACHINEWORKERS, AFL-CIO, LOCAL 790,
Petitioner,

v.

ROBBINS & MYERS, INC.,
Respondent.

DORTHA ALLEN GUY,
Petitioner,

v.

ROBBINS & MYERS, INC.,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Relevant Docket Entries

DATE	PROCEEDINGS
3-19-75	Plaintiff's Complaint filed with United States District Court for the Western District of Tennessee.
4-11-74	Answer of International Union of Electrical, Radio and Machine Workers, Local 790 filed.
4-29-74	Motion to dismiss filed by Defendant Robbins & Myers, Inc.
5-10-74	Plaintiff's Memorandum in Opposition to Motion to Dismiss filed.
5-30-74	Order dismissing plaintiff's 42 U.S.C. §1981 claim against Robbins & Myers, Inc. and denying dismissal of Plaintiff's Title VII Claim as entered by the District Court.
6- 4-74	Motion to Amend Complaint filed.
6- 7-74	Motion to Reconsider May 30, 1974 Order filed by Robbins & Myers, Inc.
6-10-74	Answer of Robbins & Myers, Inc. filed.
6-12-74	Memorandum Opinion and Order Granting Defendant's Motion to Dismiss Title VII claims entered.
6-14-74	Plaintiff's Motion to Reconsider Order of June 12, 1974, filed.
6-19-74	Order on Motion for Reconsideration entered.
6-22-74	Plaintiff's Motion to Dismiss Complaint as to IUE, Local 790 filed.

Relevant Docket Entries

- 6-22-74 Joint Motion to Realign IUE as Plaintiff or to Allow IUE to Intervene as Amicus Curiae filed.
- 6-22-74 Motion Pursuant to Rule 54(B) to Certify Court's Order of June 19, 1974 as Final filed.
- 7-19-74 Notice of Appeal filed with the United States Court of Appeals for the Sixth Circuit.
- 7-19-74 Motion of IUE to Realign filed.
- 8-26-74 Order Realigning IUE as Plaintiff and Dismissing Action against the IUE entered.
- 8-26-74 Rule 54(B) Certificate signed by District Court.
- 10-24-75 Opinion of Court of Appeals entered.
- 12- 9-75 Order of Court of Appeals denying rehearing en banc entered.
- 3- 5-76 Petition for Writ of Certiorari in No. 75-1264 filed with United States Supreme Court.
- 3- 8-76 Petition for Writ of Certiorari in No. 75-1276 filed.
- 4-26-76 Petitions in Nos. 75-1264, 75-1276 granted.

Note Regarding Opinions Printed in the Petitions

Pursuant to the "Memorandum re Printing" of the Clerk, the Opinion, Orders, and Judgments of the Courts Below, having been printed in an Appendix to one of the Petitions for a Writ of Certiorari, will not be reprinted in this Appendix. Those opinions, and their location in the Appendices to the Petitions are as follows:

OPINION	No. 75-1264	No. 75-1276
	Pet. App. Pages	Pet. App. Pages
Decision of the United States Court of Appeals for the Sixth entered October 24, 1975	1a-12a	11a-22a
Order of the United States Court of Appeals for the Sixth Circuit, denying rehearing en banc, entered December 9, 1975	13a	23a
Order of the United States District Court for the Western District of Tennessee entered May 30, 1974	14a-19a	—
Opinion of the United States District Court for the Western District of Tennessee entered June 12, 1974	20a-24a	1a- 5a
Opinion of the United States District Court for the Western District of Tennessee entered June 19, 1974	25a-29a	6a-10a

Complaint

[Filed March 19, 1974]

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION
CIVIL ACTION NUMBER C-74-165

DORTHA ALLEN GUY,

Plaintiff,

vs.

ROBBINS & MYERS, INC.
(HUNTER FAN DIVISION),

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, LOCAL 790 (AFL-CIO),

Defendants.

(COMPLAINT FOR VIOLATION OF THE CIVIL RIGHTS ACT OF
1866 AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964)
JURISDICTION AND VENUE

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e et seq., as amended by Public Law 92-261, March 24, 1972 and the Civil Rights Act of 1866, 42 U.S.C. § 1981.

2. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 2000 (e)5(f)(3) and 28 U.S.C. § 1343(4).

Complaint

3. The racially discriminatory practices alleged below were and are being committed in, and but for these practices Plaintiff Guy would be employed in the Western District of Tennessee.

PARTIES

4. Plaintiff Dortha Allen Guy is a Black female citizen of the United States and a resident of Memphis, Shelby County, Tennessee.

5. Defendant Robbins & Myers, Inc. (Hunter Fan Division) (hereinafter "Company") is a manufacturer of electrical appliances doing business in the State of Tennessee and the City of Memphis. Defendant Robbins & Myers is an employer within the meaning of 42 U.S.C. § 2000 e-(b) in that the Company is engaged in an industry affecting commerce and employs at least fifteen persons.

6. Defendant International Union of Electrical, Radio and Machine Workers, Local 790 (AFL-CIO) (hereinafter "Union") is a labor organization within the meaning of 42 U.S.C. § 2000 e-(d) in that said Union is engaged in an industry affecting commerce and exists, in whole or in part, for the purpose of dealing with the Company concerning grievances, labor disputes, wages rates of pay, hours, and other terms or conditions of employment of the employees of the Company. The Union has at least fifteen members.

CONDITIONS PRECEDENT

7. Plaintiff Guy has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 2000 e-5 (f) (1). On February 10, 1972 Plaintiff filed with the United States Equal Opportunity Commission, hereinafter

Complaint

the "Commission", a timely charge pursuant to 42 U.S.C. § 2000 e-5 (b) and (e). This charge alleged that the Company had discriminated against plaintiff because of her race in that she was terminated while on sick leave, even though she was following established procedures regarding sick leave. By "Letter of Determination" dated November 20, 1973 the Commission informed plaintiff that it had found no reason to believe that race was a factor in the decision to discharge her or that the Union had failed to represent her because of her race. This "Letter" was accompanied by plaintiff's Notice of Right to Sue. On February 20, 1974, within 90 days of receipt of said Letter of Determination and Notice of Right to Sue, plaintiff by filing with this Court a copy of the Right to Sue Notice, sought and was granted an extension of 30 days within which to perfect the filing of this action. This Complaint is timely filed within the 30 day extension granted.

STATEMENT OF FACTS

8. Plaintiff was hired by the Company on November 1, 1968 and remained in its employ until she was terminated on or about October 25, 1971. From October 19, 1971 to October 24, 1971 plaintiff was on sick leave with permission granted by the Company. At the expiration of her sick leave plaintiff was not able to return to work. It was plaintiff's understanding that she would not be permitted to return to work at the Company until released by her physician. Therefore, on or about October 25, 1971 in the early morning plaintiff called the Company and left a message to the effect that she would not return to work as planned but would instead again visit her physician for purposes of further treatment preparatory to being released by said physician. Plaintiff did in fact visit her

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physician, was treated by him, and ordered not to return to work. Plaintiff notified the Company by mail, Return Receipt Requested, that she could not return to work as planned because of her physician's orders. At all times throughout her illness plaintiff followed the Company's policy governing illnesses and leave. On October 29, 1971 Plaintiff returned to work and was informed by the Company's Assistant Personnel Manager that she had "voluntarily quit" by failing to return to work on the day following the expiration of her sick leave. Plaintiff disagreed with the Company's determination that she had "voluntarily quit" and accordingly when the Company reported to the Tennessee Department of Employment Security that Plaintiff had voluntarily quit she appealed the Department's initial determination that she was not entitled to unemployment compensation and obtained a ruling that she had not voluntarily quit but was medically unable to return to work and was therefore entitled to unemployment compensation.

9. To plaintiff's knowledge the Company, on at least one other occasion, has reinstated a white employee who under circumstances similar to those of plaintiff failed to return to work upon expiration of leave. Plaintiff alleges that were it not for her race she too would have been reinstated.

10. Plaintiff further alleges that defendant Union failed to insist on reinstatement for plaintiff and that said failure was attributable to her race.

STATEMENT OF CLAIM

11. The defendant Company, its agents and employees have and are engaged in acts and practices which dis-

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criminate on the basis of race against plaintiff. These acts and practices include, but are not limited to, the following:

- a. Terminating plaintiff because of her race; and
- b. Failing to reinstate plaintiff because of her race.

12. The defendant Union, its agents, officers, and employees have and are engaged in acts and practices which discriminate on the basis of her race. The acts and practices complained of herein include, but are not limited to, defendant Union's failure to represent her with the same diligence as that with which white employees in similar situations are represented.

13. The acts and practices alleged in paragraphs 11 and 12 above deprive plaintiff of rights protected by 42 U.S.C. § 2000-e et seq. and by 42 U.S.C. § 1981. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for preliminary and permanent injunction is her only means of securing adequate relief. Plaintiff is now suffering and will continue to suffer irreparable injury from the discriminatory acts and practices set forth herein. Unless enjoined by order of this Court, the defendants will continue to engage in these or similar acts and practices.

PRAYER

WHEREFORE, plaintiff prays that the defendants, their officers, agents, employees, assigns, successors in office and all persons in active concert or participation with them or any of them be preliminarily and permanently enjoined from engaging in any racially discriminatory employment practice or in any practice or conduct which operate to

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continue the effects of past racially discriminatory practices, and specifically from:

1. Failing to reinstate plaintiff Guy to her former position or a position comparable thereto, with backpay, retroactive seniority and other benefits she would have received or been entitled to in absence of discrimination; and
2. Failing to accord or acquiescing in the failure to accord plaintiff Guy the same rights and representation in protesting her termination as accorded white employees in similar situations.

Plaintiff further prays for such additional relief as the cause of justice may require including her costs, disbursements and reasonable attorneys' fees in this action.

Dated this the 19th day of
March, 1974

Respectfully submitted,

/s/ A. C. WHARTON, JR.
A. C. WHARTON, JR.
MEMPHIS AND SHELBY COUNTY
LEGAL SERVICES ASSOCIATION
46 North Third Street
Memphis, Tennessee 38103
(901) 526-5132
Attorney for the Plaintiff

(Affidavit of Service omitted in printing)

Answer

[Filed April 29, 1974]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

[Title Omitted in Printing]

ANSWER OF DEFENDANT INTERNATIONAL UNION OF
ELECTRICAL, RADIO AND MACHINE WORKERS,
AFL-CIO-CLC, LOCAL 790

For its answer to Plaintiff's complaint in this action, Defendant International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, Local 790 (whose true and correct name is as stated herein), hereinafter referred to as Defendant Local 790, admit, deny and allege as follows:

ANSWERING THE COMPLAINT

1. Complaint Paragraph 1: Admitted.
2. Complaint Paragraph 2: Admitted.
3. Complaint Paragraph 3: Denied.
4. Complaint Paragraph 4: Defendant Local 790 admits that Dortha Allen Guy is a black female. Defendant Local 790 denies each and every allegation contained in Paragraph 4 of the complaint not specifically admitted in Paragraph 4 of this answer for want of knowledge.
5. Complaint Paragraph 5: Defendant Local 790 admits that Defendant Robbins & Myers Inc. (Hunter Fan

Answer

Division) hereafter called Defendant Employer, is an "employer" within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and does business in the State of Tennessee, City of Memphis. Defendant Local 790 denies each and every allegation contained in Paragraph 5 of the complaint not specifically admitted in Paragraph 5 of this answer.

6. Complaint Paragraph 6: Defendant Local 790 admits that it is a "labor organization" within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and has at least fifteen (15) members. Defendant Local 790 denies each and every allegation contained in Paragraph 6 of the complaint not specifically admitted in Paragraph 6 of this answer.

7. Complaint Paragraph 7: Defendant Local 790 admits that Plaintiff filed with the Equal Employment Opportunity Commission on February 20, 1972, a charge alleging that Defendant Employer discriminated against Plaintiff because of her race in that she was terminated while on sick leave even though she was following established procedures regarding sick leave. Defendant Local 790 admits a District Director on behalf of the Equal Employment Opportunity Commission issued a determination letter dated November 20, 1973, in which he found no reason to believe that race was a factor in Defendant Employer's decision to discharge her or that Defendant Local 790 failed to represent her because of her race and that this determination letter was accompanied by a "Notice of Right to Sue" dated November 20, 1973. Defendant Local 790 denies each and every allegation contained in

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Answer

Paragraph 7 of the Complaint not specifically admitted in Paragraph 7 of this answer.

8. Complaint Paragraph 8: Defendant Local 790 admits Plaintiff was hired by Defendant Employer on or about November 1, 1968 and was terminated on or about October 25, 1971. Defendant Local 790 denies each and every allegation contained in Paragraph 8 of the complaint not specifically admitted in Paragraph 8 of this answer.

9. Complaint Paragraph 9: Denied.

10. Complaint Paragraph 10: Denied.

11. Complaint Paragraph 11: Denied.

12. Complaint Paragraph 12: Denied.

13. Complaint Paragraph 13: Denied.

FIRST DEFENSE

14. On October 27, 1971, Defendant Local 790 filed a grievance on behalf of Plaintiff and processed said grievance through all steps of the grievance procedure contained in a collective bargaining agreement with Defendant Employer dated September 29, 1969 and effective from September 29, 1969 through August 31, 1972.

SECOND DEFENSE

15. Plaintiff failed and refused to cooperate with Defendant Local 790 in the processing of the grievance set forth in Paragraph 14 of this answer.

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Answer

THIRD DEFENSE

16. Defendant Local 790 represented Plaintiff in a fair and impartial manner, in the processing of the grievance set forth in Paragraph 14 of this answer.

FOURTH DEFENSE

17. Defendant Local 790 has previously filed and processed grievances on behalf of Plaintiff which grievances were won by Defendant Local 790.

/s/ RONALD H. JANETZKE
Ronald F. Janetzke
3461 Office Park Drive
Kettering, Ohio 45439
(513) 294-1491
Attorney for Defendant Local 790

RHJ:skp/ope333

(Affidavit of Service omitted in printing)

Motion to Dismiss

[Filed April 29, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

[Title Omitted in Printing]

Comes now defendant Robbins & Myers, Inc. (Hunter Fan Division), and pursuant to Rule 12 of the Federal Rules of Civil Procedure, respectfully moves this Court to dismiss the action filed herein upon the following grounds:

1. The Court lacks subject matter jurisdiction and the Complaint fails to state a claim against the defendant upon which relief can be granted in that the plaintiff failed to file a timely charge with the Equal Employment Opportunity Commission as required by Section 706(d) of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A., Sec. 2000e-5(d).

2. The Court lacks subject matter jurisdiction and the Complaint fails to state a claim against the defendant upon which relief can be granted in that plaintiff failed to commence this action within the time limitation imposed by Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended by Public Law 92-261.

3. The Court lacks subject matter jurisdiction and the Complaint fails to state a claim against the defendant upon which relief can be granted in that plaintiff failed

Motion to Dismiss

to commence this action within the time limitation imposed by Tennessee Code Annotated, Section 28-304.

Respectfully submitted,

McKNIGHT & HUDSON

2222 Clark Tower

Memphis, Tennessee 38137

By /s/ CHARLES A. LAWRENCE, JR.

Charles A. Lawrence, Jr.

*Attorneys for Robbins & Myers, Inc.**(Hunter Fan Division)*

(Certificate of Service omitted in printing)

Memorandum of Facts

[Filed May 10, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

[Title Omitted in Printing]

PLAINTIFF'S MEMORANDUM OF FACTS AND LAW IN OPPOSITION
TO DEFENDANT COMPANY'S MOTION TO DISMISS

I**INTRODUCTION**

On April 29, 1974, defendant, Robbins & Myers Inc., (Hunter Fan Division) filed with this Court a Motion to Dismiss Plaintiff's complaint, on the grounds that:

1. The Court lacks subject matter jurisdiction and the complaint fails to state a claim against the defendant upon which relief can be granted in that the plaintiff failed to file a timely charge with the Equal Employment Opportunity Commission as required by § 706 (d) of Title VII of the Civil Rights Act of 1964, 42 USCA, § 2000 e-5 (d).

2. The Court lacks subject matter jurisdiction and the Complaint fails to state a claim against the defendant upon which relief can be granted in that plaintiff failed to commence this action within the time limitation imposed by § 706 (f) (1) of Title VII of the Civil Rights Act of 1964, as amended by Public Law 92-261.

3. The Court lacks subject matter jurisdiction and the Complaint fails to state a claim against the defendant upon

Memorandum of Facts

which relief can be granted in that plaintiff failed to commence this action within the time limitation imposed by Tennessee Code Annotated, § 28-304.

Plaintiff contends that defendant Company's motions are without merit and should be denied.

II

**PLAINTIFF FILED WITH THE EEOC
A TIMELY CHARGE OF DISCRIMINATION**

A. The Facts.

On or about October 25, 1971, plaintiff's employment with the defendant company was terminated. Plaintiff, having been an active member in Local 790 of the International Union of Electrical, Radio and Machine Workers, decided to first attempt to resolve her grievance by resorting to established grievance procedures. Accordingly, on October 27, 1971 a grievance was filed on her behalf with her Union protecting her discharge. A copy of this grievance is attached hereto as Exhibit A. On November 18, 1971 plaintiff's grievance was denied (copy attached). On February 10, 1972 plaintiff filed her charge of discrimination with the Equal Employment Opportunity Commission.

• • •

Attachment A, Annexed to Memorandum of Facts**GRIEVANCE**

No. 23480

Name Dortha Guy Dept. Clock No. Date 10-27-71

Protest unfair action of Co. for discharge. Ask that she be reinstated with compensation for lost time.

Employee's Signature ALICE JONES

Date

Foreman's Answer

Signed

Date

Foreman's Answer Unsatisfactory Because:

3rd Step

Employee's Signature

Form 40377

Grievance denied.

Grievance No. 1450—Dortha Guy—Termination

Dortha Guy was terminated in accordance with the provisions of the current collective bargaining agreement, specifically Article V, Section 14 (f).

The writer made a personal attempt to contact her physician to determine whether or not she was incapacitated to

Attachment A, Annexed to Memorandum of Facts

the extent that she was unable to renew her leave of absence.

No information was produced to show why Dortha Guy should not be terminated in accordance with Article V, Section 14 (f).

Termination for failure to report back from leave is prerequisite to recalling a junior employee to fill the vacancy created by the non-reporting employee.

Grievance denied.

Yours very truly,

HUNTER FAN AND VENTILATING COMPANY

/s/ C. T. KROGH

C. T. Krogh

Personal Director

CTK/te

Motion to Amend the Complaint

[Filed June 4, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

Comes now the Plaintiff, Dortha Allen Guy, and moves to amend her complaint in the following respect to wit:

Amend Paragraph 7, Conditions Precedent, to read as follows:

Plaintiff contends that by her taking her complaint through established grievance procedures with the International Union of Electrical, Radio and Machine Workers, Local 790 (AFL-CIO) to raise any rights that were due her under the contract tolled the running of the ninety day requirement at two (2) days.

Amend Paragraph 8, Statement of Facts, to read as follows:

... Plaintiff further contends that she disagreed with the Company's determination that she had "voluntarily quit" and accordingly when the Company reported to the Tennessee Department of Employment Security that Plaintiff had voluntarily quit she appealed the Department's initial determination that she was not entitled to unemployment compensation and obtained a ruling that she had *not* voluntarily quit but was medically unable to return to work and was therefore entitled to unemployment compensation.

Motion to Amend the Complaint

WHEREFORE, Plaintiff prays that judgment be rendered in her favor upon the foregoing allegations.

Dortha Allen Guy
By /s/ A. C. WHARTON, JR.
A. C. WHARTON, JR.

MEMPHIS-SHELBY COUNTY
LEGAL SERVICES ASSOCIATION
325 Dermon Building
Memphis, Tennessee 38103
526-5132

(Certificate of Service omitted in printing)

Motion to Reconsider

[Filed June 7, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

[Title Omitted in Printing]

Defendant Company, Robbins & Myers, Inc. (Hunter Fan Division), respectfully requests that the Court reconsider its Order dated May 30, 1974, to the extent that the Court failed to consider the first ground of Defendant Company's Motion to Dismiss concerning whether plaintiff's action was barred by reason of her failure to file a timely charge with the Equal Employment Opportunity Commission.

The law is well settled that the filing of a timely charge with the Equal Employment Opportunity Commission is a jurisdictional prerequisite for any subsequent action pursuant to Title VII of the Civil Rights Act of 1964. *Alexander v. Gardner-Denver Co.*, 94 S. Ct. 1011, 7 EPD, para. 9148 (February 19, 1974); *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (CA5, 1970); *Gordon v. Baker Protective Services, Inc.*, 358 F.Supp. 867 (ND Ill., 1973); *Brown v. General Electric Co.*, 5 EPD, para. 7990 (MD Tenn., 1972), aff'd. 487 F.2d 1377 (CA6, 1973); *Heard v. Mueller Company*, 5 EPD, para. 7960 (ED Tenn., 1971), aff'd. 464 F.2d 190 (CA6, 1972). The facts, as alleged in the Complaint, clearly reveal that plaintiff did not file a charge with the Commission within the ninety (90) day statutory period which was in effect when her alleged cause of action arose. The only argument plaintiff has presented

Motion to Reconsider

in an attempt to overcome this jurisdictional defect is that the ninety (90) day period was tolled because of a grievance filed pursuant to a collective bargaining agreement. It is Defendant Company's position, as set forth in its Supplemental Memorandum filed with the Court on May 22, 1974, that the filing of such a grievance does not toll the period for filing a charge with the Commission.

Defendant Company has already expended much time, effort and money in this matter because of grievance procedure meetings, unemployment compensation hearings, and an investigation by the Equal Employment Opportunity Commission. It is respectfully submitted that justice requires that there should be a decision as to whether plaintiff's action is or is not barred by her failure to file a timely charge with the Commission before Defendant is required to expend more time, effort and money in connection with this matter.

Respectfully submitted,

McKNIGHT & HUDSON
Suite 2222, Clark Tower
Memphis, Tennessee 38137

By /s/ CHARLES A. LAWRENCE, JR.
Charles A. Lawrence, Jr.
Attorneys for Robbins & Myers, Inc.
(Hunter Fan Division)

(Certificate of Service omitted in printing)

Answer

[Filed June 10, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

Comes now the defendant, Robbins & Myers, Inc. (Hunter Fan Division), and for answer and defense to the Complaint filed in this cause against it states:

I.

Defendant Company denies the allegations contained in Paragraph 1 of the Complaint.

II.

Defendant Company denies the allegations contained in Paragraph 2 of the Complaint.

III.

Defendant Company denies the allegations contained in Paragraph 3 of the Complaint.

IV.

Defendant Company admits the allegations contained in Paragraph 4 of the Complaint.

V.

Defendant Company admits the allegations contained in Paragraph 5 of the Complaint.

Answer**VI.**

Defendant Company admits the allegations of Paragraph 6 of the Complaint concerning the fact that Defendant Union has at least fifteen (15) members and is a labor organization within the meaning of Title VII of the Civil Rights Act of 1964, as amended. All other allegations contained in Paragraph 6 of the Complaint are denied.

VII.

In response to Paragraph 7 of the Complaint, Defendant Company admits that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on February 10, 1972; that the Commission informed plaintiff by "Letter of Determination" dated November 20, 1973, that the Commission has found no reason to believe that race was a factor in plaintiff's termination of employment with Defendant Company or in Defendant Union's handling of her grievance; and, that the Commission provided plaintiff with a "Notice of Right to Sue" with the November 20, 1973 "Letter of Determination". Defendant Company is without sufficient knowledge to answer the allegations concerning the purported filing of plaintiff's "Notice of Right to Sue" with the Court and the purported extension of time to file this action. All other allegations contained in Paragraph 7 of the Complaint are denied.

VIII.

In response to Paragraph 8 of the Complaint, Defendant Company admits that plaintiff was in its employ from November 1, 1968 until October 25, 1971; that plaintiff was on a sick leave granted by Defendant Company from October 19, 1971 to October 24, 1971; that plaintiff returned to Defendant Company on October 29, 1971 and was advised

Answer

that she was considered to have voluntarily quit; that plaintiff appealed the initial determination of the Tennessee Department of Employment Security that plaintiff was not entitled to unemployment compensation; and, that plaintiff was subsequently awarded unemployment compensation. Defendant Company is without sufficient knowledge at this time to answer the remaining allegations contained in Paragraph 8 of the Complaint.

IX.

Defendant Company denies the allegations contained in Paragraph 9 of the Complaint.

X.

Defendant Company denies the allegations contained in Paragraph 10 of the Complaint.

XI.

Defendant Company denies the allegations contained in Paragraph 11 of the Complaint.

XII.

Defendant Company denies the allegations contained in Paragraph 12 of the Complaint.

XIII.

Defendant Company denies the allegations contained in Paragraph 13 of the Complaint.

FIRST DEFENSE

This Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

The Complaint fails to state a claim against the Defendant Company upon which relief can be granted.

Answer

THIRD DEFENSE

The Complaint fails to allege facts sufficient for the awarding of the extraordinary relief of a preliminary and permanent injunction.

FOURTH DEFENSE

The Plaintiff is barred from bringing this action by her failure to comply with the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C., Sec. 2000e, *et seq.*

FIFTH DEFENSE

The Plaintiff's action is barred by laches on the part of the Plaintiff.

SIXTH DEFENSE

The Plaintiff's action is barred by the applicable Tennessee state statute of limitations.

WHEREFORE, Defendant Company prays that the Complaint herein be dismissed with costs, including reasonable attorneys' fees herein expended, assessed against the Plaintiff.

McKNIGHT & HUDSON
Attorneys for Defendant
Suite 2222 Clark Tower
Memphis, Tennessee 38137

By /s/ FLETCHER L. HUDSON
Fletcher L. Hudson

/s/ CHARLES A. LAWRENCE, JR.
Charles A. Lawrence, Jr.

(Certificate of Service omitted in printing)

Motion to Reconsider

[Filed June 14, 1974]

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

On or about June 7, 1974 defendant Company entered a Motion to Reconsider the Court's Order dated May 30, 1974. This Motion was served on counsel for the plaintiff on June 10, or June 11, 1974. Plaintiff's counsel immediately undertook to prepare written opposition to the Motion to Reconsider. However, on June 12, 1974, the Court entered its Memorandum Opinion and Order granting the defendant's Motion to Dismiss. Plaintiff was therefore deprived of an opportunity to respond to the Motion to Reconsider by the entering of the Court's Order prior to the expiration of the time allowed by Rule 9-A of the Rules of the United States District Court for the Western District of Tennessee which expressly provide "the response to the Motion shall be filed within ten (10) days after service of the Motion. . ." Therefore, the Court's entering of its Order before the expiration of the ten (10) days allowed under Rule 9 unjustly deprived plaintiff of an opportunity to respond. While the plaintiff is very much appreciative of the Court's expeditious treatment of this matter, she is not so appreciative as to allow her arguments to be given short shrift and treated in such a manner that fail to give even passing notice to the precedent cited in plaintiff's arguments against the Motion to Reconsider.

Additionally, those points on which the Court based its Order granting the Motion to Dismiss were for the most

Motion to Reconsider

part addressed in the response that plaintiff was preparing at the time the Order dismissing the Complaint was received. It is submitted that plaintiff is entitled, both by simple notions of justice and by the local rules, to have these arguments heard.

Furthermore, it appears that the Order granting the Motion to Dismiss introduces new arguments which have not been raised either by plaintiff or defendant, particularly the idea of a continuing violation. This argument certainly has not been raised by plaintiff and in no way does plaintiff at this time rely on such an argument. To the extent that the Court order dismissing the Complaint was based on such a theory we would respectfully submit that such reliance is misplaced. Our position is that so aptly described by the Sixth Circuit Court of Appeals in the case of *Schiff v. Mead Corp.*, — F.2d — 3 EPD #8043, (6th Cir., 1970), which we again reiterate should be controlling and dispositive of the issue now before this Court.

For all of the foregoing reasons plaintiff respectfully requests this Court to reconsider its Order of June 12, 1974 dismissing plaintiff's Complaint. Plaintiff also requests that oral argument be held on this matter.

Respectfully submitted,

/s/ A. C. WHARTON, JR.

A. C. WHARTON, JR.

Attorney for Plaintiff

MEMPHIS AND SHELBY COUNTY

LEGAL SERVICES ASSOCIATION

46 North Third Street

325 Derron Building

Memphis, Tennessee 38103

526-5132

(Certificate of Service omitted in printing)

Motion to Dismiss the Complaint

[Filed June 22, 1974]

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

[Title Omitted in Printing]

MOTION TO DISMISS COMPLAINT AS TO DEFENDANT INTER-
NATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE
WORKERS, LOCAL 790 (AFL-CIO)

Now comes Dortha Guy, plaintiff herein, through her attorney and pursuant to Rule 41 (a)(2) respectfully moves this Court to enter an Order dismissing plaintiff's complaint as to defendant International Union of Electrical, Radio, and Machine Workers, Local 790 (AFL-CIO). The reason for plaintiff's Motion to Dismiss are set forth in the points and authorities attached hereto.

/s/ A. C. WHARTON, JR.
A. C. Wharton, Jr.
Attorney for Plaintiff
Memphis and Shelby County
Legal Service Association
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325 Dermon Building
Memphis, Tennessee 38103
526-5132

(Certificate of service omitted in printing)

Motion to Realign

[Filed June 22, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

MOTION TO REALIGN DEFENDANT INTERNATIONAL UNION OF
ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 790
(AFL-CIO) AS PARTY PLAINTIFF

OR

IN THE ALTERNATIVE, MOTION TO ALLOW DEFENDANT UNION
TO INTERVENE AS AMICUS CURIAE

Now comes Dortha Guy, plaintiff herein, and the International Union of Electrical, Radio and Machine Workers, Local 790 (AFL-CIO), defendant herein and respectfully move this Court to enter an Order realigning defendant Union as a party plaintiff in this matter so as to permit defendant Union to participate in the appeal of the Court's June 19th Order dismissing the complaint as to the defendant Company on the grounds that the filing of the plaintiff's grievance with defendant Union did not toll the running of the time limit within which plaintiff's charge of discrimination was to have been filed with the Equal Employment Opportunity Commission; or in the alternative enter an Order allowing said Union to intervene and par-

Motion to Realign

icipate as amicus curiae on behalf of plaintiff, Dortha Guy on the above issue.

/s/ A. C. WHARTON, JR.
A. C. Wharton, Jr.
Attorney for Plaintiff
Memphis and Shelby County
Legal Services Association
46 North Third Street
Memphis, Tennessee 38103

Ronald H. Janetzke
General Counsel
International Union of Electrical,
Radio, and Machine Workers,
AFL-CIO-CLC
3461 Office Park Drive
Kettering, Ohio 45439

(Certificate of Service omitted in printing)

Motion Pursuant to Rule 54(b)

[Filed June 22, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

**MOTION PURSUANT TO RULE 54 (b) TO CERTIFY COURT'S
ORDER OF JUNE 19, 1974 AS FINAL**

Now comes plaintiff, Dortha Guy, through her attorney and respectfully moves the Court to enter an Order certifying its Order of June 19, 1974 dismissing plaintiff's complaint as to defendant Robbins and Myers as final and appealable as required by Rule 54 (b) of the Federal Rules of Civil Procedure. The reasons for plaintiff's Motion are more fully set forth in the Points and Authorities attached hereto.

Respectfully submitted,

/s/ A. C. WHARTON, JR.
A. C. Wharton, Jr.
Attorney for Plaintiff
Memphis and Shelby County
Legal Service Association
46 North Third Street
Memphis, Tennessee 38103

(Certificate of Service omitted in printing)

Defendant Union's Motion to Realign

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

DEFENDANT UNION'S MOTION TO REALIGN DEFENDANT
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO-CLC, LOCAL 790
AS PARTY PLAINTIFF OR IN THE ALTERNATIVE TO
ALLOW DEFENDANT UNION TO INTERVENE AS
AMICUS CURIAE

Defendant International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC Local 790 (hereafter called Defendant Local 790) moves the Court for leave to be realigned as a party plaintiff in order for said Defendant Union to participate in appeal of the Court's decision to dismiss this case for failure to file a timely charge with the EEOC with the right to be served with copies of all pleadings and briefs, to file appropriate pleadings or briefs, and to fully participate in the appeal by Plaintiff.

1. Defendant Local 790 has an interest in the issue which will be before the Court of Appeals which interest is aligned with that of Plaintiff.

2. Defendant Local 790 is the duly certified and recognized collective bargaining agent for a unit of production and maintenance employees at the Defendant Employer's plant in Memphis, Tennessee, which is the plant named in the complaint herein.

Defendant Union's Motion to Realign

3. Defendant Local 790 has at all times endeavored to protect all unit employees whom they represent from discrimination because of race and to that end negotiated a collective bargaining agreement with Defendant Employer which provides:

Article XXXI—NO DISCRIMINATION

Section 1. The provisions of this contract shall be applied to all employees without discrimination by either the Company or the Union on account of sex, race, color, creed, or national origin. The parties further agree to comply with the provisions of the Age Discrimination in Employment Act of 1967.

3. Defendant Local 790 has negotiated in its agreement with Defendant Employer a grievance and arbitration procedure which it encourages employees to use when Defendant Employer violates the collective bargaining agreement. The grievance and arbitration procedures of the contract provides as follows:

Article XVIII—GRIEVANCE PROCEDURE

Section 1. All differences, disputes and grievances that may arise after the signing of this Agreement between the Union, any employee or group of employees, and the Company concerning the application or interpretation of this Agreement shall be settled in the following manner:

Step 1. Between the employee on one hand and the employee's foreman on the other. If the employee requests his Steward be present, the foreman will send for him without undue delay. The fore-

Defendant Union's Motion to Realign.

man shall give his answer to the complaint within twenty-four (24) hours from the time it was referred to him. If the foreman's answer is unsatisfactory, the Steward will present a written grievance and the foreman shall give his answer in writing the following workday. If the grievance is not appealed in writing and stating reasons for appeal on the grievance form to the next step within four (4) working days, it will be considered settled at this step.

Step 2. Between the Departmental Steward, the Chief Steward on the one hand, and the General Foreman or his designated representative and the line foreman on the other. Should the Chief Steward be absent from the plant, the president of the Union shall be called to this meeting which shall be held within one (1) week after the grievance has been properly appealed in writing to this step. If requested by either party, the aggrieved employee may be present. If no satisfactory settlement is reached within twenty-four (24) hours after the meeting in this step, the grievance shall be appealed to Step 3 in writing within four (4) working days or it will be considered settled at this step.

Step 3. Between the Union Officers (Sec. 9, Article V) on the one hand, and representatives of management on the other. The International Union representative may attend these meetings. The Company will give written answers to grievances within ten (10) work days after this step.

Step 4. Grievances involving a claimed violation of a specific provision of this Agreement may be referred to arbitration by the Union if not satisfac-

Defendant Union's Motion to Realign

torily adjusted in Step 3 above by giving the Company written notice within ten (10) days of Company's final decision in Step 3.

The parties shall select an Arbitrator by mutual agreement. If no agreement is reached within five (5) working days from the date of the request for arbitration, the parties shall request a panel of arbitrators from the Federal Mediation and Conciliation Service. If the parties cannot select an Arbitrator from this panel within thirty (30) days, they shall request a second panel of arbitrators from the Federal Mediation and Conciliation Service, and from this panel each party shall strike an even number of names and the remaining name shall be the Arbitrator. The expense of the Arbitrator shall be equally divided between the Union and the Company. The impartial arbitrator shall have no power to change or modify the terms of this Agreement or to make any additions thereto.

Arbitration proceedings shall be held during working hours, but the Company shall not pay any of the participants for the Union. The decision of the Arbitrator shall be final and binding upon both parties.

Section 2. In the event a grievance arises between an employee and the Company, the employee shall submit a grievance to the Company within five (5) working days of the commission of the act originating the grievance. Grievances which are submitted after five (5) working days of the commission of the act originating the grievance will be accepted if the employee can prove circumstances beyond his control prevented knowledge of the act originating the grievance.

Section 3. Two (2) representatives of the International Union (IUE-AFL-CIO) will, upon request,

Defendant Union's Motion to Realign

be admitted to the plant to check on a specific grievance after no agreement is reached at Step 2.

Defendant Local 790 is interested to see that its members' rights to use their contractual grievance procedure is maintained and protected.

4. Defendant Local 790 believes its presence in this suit as a party plaintiff for purposes of the appeal will be of assistance to the Courts and to all parties in having the representative of unit employees before the Court.

/s/ RONALD H. JANETZKE
 Ronald H. Janetzke
Attorney for Defendant
 IUE-AFL-CIO-CLC
 Local 790
 3461 Office Park Drive
 Kettering, Ohio 45439
 (513) 294-1491

RHJ:skp/ope333

Order

[Filed August 26, 1974]

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

[Title Omitted in Printing]

This Court entered an Order on June 19, 1974, dismissing plaintiff's complaint as to defendant company, Robbins & Myers, Inc. Plaintiff now moves this Court to dismiss the remaining defendant, International Union of Electrical, Radio and Machine Workers, Local 790 (AFL-CIO).

It appears to the Court that the plaintiff and Union have agreed that this action should be dismissed against the Union. Therefore, on this basis, this Court dismisses plaintiff's action against defendant Union.

Additionally, plaintiff and defendant Union request an Order realigning defendant Union as a party plaintiff for purposes of appeal of this Court's June 19, 1974, Order dismissing the cause against defendant Robbins and Myers, Inc. Robbins & Myers was dismissed on the ground that the filing of plaintiff's grievance with the Union did not toll the statutory time limit within which she is permitted to file a claim with the Equal Employment Opportunity Commission under the Act sued upon.

Since it appears to the Court that both plaintiff and the Union if realigned now have a substantial interest in the issue involved in this appeal, this Court Orders that defendant Union be realigned as a party plaintiff for purposes of the appeal of this Court's Order of June 19, 1974, dis-

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Order

missing Robbins & Myers, Inc., as a defendant. An order under F.R.C.P. 54(b) is being entered accordingly.

This day of August, 1974.

/s/ HARRY W. WELLFORD
Harry W. Wellford
United States District Court Judge

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Rule 54 (b) Certificate

[Filed August 26, 1974]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Title Omitted in Printing]

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that with respect to the issues determined by this Court's Order of June 19, 1974 on plaintiff's claim against defendant Robbins & Myers, Inc. and to which this certificate is appended, be and hereby is CERTIFIED, in accordance with Rule 54 (b), Federal Rules Civil Procedure:

(1) That the Court has directed the entry of final judgment in favor of defendant Robbins and Myers and against plaintiff Dortha Guy; and

(2) That the Court has determined that there is no just reason for delay.

/s/ HARRY W. WELLFORD
District Judge